

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Leilani Rhodes	Team: Squad #9	CCRB Case #: 201900029	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 12/23/2018 4:51 PM	Location of Incident: § 87(2)(b)	Precinct: 121	18 Mo. SOL 6/23/2020	EO SOL 2/7/2021	
Date/Time CV Reported Mon, 12/24/2018 11:48 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 01/02/2019 11:05 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Dipaolo	4997	955886	121 PCT
2. POF Diana Nerguti	17813	964679	121 PCT
3. An Officer			121 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM James Taylor	05311	954364	121 PCT
2. POM James Barbee	22173	952441	121 PCT
3. POM James Moussa	31415	963664	121 PCT
4. POF Lauren Brooke	15537	964407	121 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Dipaolo	Force: Police Officer Joseph Dipaolo used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Joseph Dipaolo	Abuse: Police Officer Joseph Dipaolo forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
C.POM Joseph Dipaolo	Force: Police Officer Joseph Dipaolo used physical force against § 87(2)(b)	§ 87(2)(b)
D.POF Diana Nerguti	Force: Police Officer Diana Nerguti used physical force against § 87(2)(b)	§ 87(2)(b)
E. An Officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)

### Case Summary

§ 87(2)(b) filed this complaint with IAB on December 24, 2018, generating Original Log Number 18-50383. The CCRB received this case on January 1, 2019.

On December 23, 2018, at approximately 4:51 p.m., § 87(2)(b)'s neighbor called 911, stating that § 87(2)(b) was harassing her. PO Joseph Dipaolo and PO Diana Nerguti, from the 121<sup>st</sup> Precinct, responded to § 87(2)(b)'s residence, located at § 87(2)(b) in Staten Island. § 87(2)(b) stated that, after speaking with § 87(2)(b)'s parents, PO Dipaolo approached him and punched him in the stomach (**Allegation A – Force:** § 87(2)(g) PO Dipaolo and PO Nerguti used force against § 87(2)(b) to forcibly remove him to the hospital (**Allegation B - Abuse of Authority:** § 87(2)(g) (**Allegation C, Allegation D- Force:** § 87(2)(g) An officer is heard using profanity against § 87(2)(b) in body worn camera video (**Allegation E – Discourtesy:** § 87(2)(g) § 87(2)(b) was removed to § 87(2)(b) hospital. No arrests were made, and no summonses were issued as a result of this incident.

Seven body worn camera video were obtained for this incident (Board Review 04, 13, 14, 18-21).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Joseph Dipaolo used physical force against § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Joseph Dipaolo forcibly removed § 87(2)(b) to the hospital.**

**Allegation (C) Force: Police Officer Joseph Dipaolo used physical force against § 87(2)(b)**

**Allegation (D) Force: Police Officer Diana Nerguti used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b)'s neighbor called 911 and stated that § 87(2)(b) was threatening her by kicking her fence and screaming at her dogs. It is also undisputed that PO Dipaolo forcibly removed § 87(2)(b) to the hospital and in the process, he and PO Nerguti forcefully brought § 87(2)(b) to the ground and used physical force against him.

§ 87(2)(b) has another open CCRB complaint, CCRB Case #201900015, involving PO Dipaolo in which officers responded to the location and forcibly removed § 87(2)(b) to the hospital after § 87(2)(b)'s father called and informed them that he has a mental health history and a history of violence and was trying to hurt himself. The video from that incident, as seen in IA #106 of this case, beginning at 2:39 into the video, § 87(2)(b) attempts to grab an object, resembling a screwdriver, during his interaction with officers (Board Review 16).

§ 87(2)(b) stated that prior to being taken to the ground, PO Dipaolo and PO Nerguti went into § 87(2)(b)'s home to speak to his father and after about a minute, PO Dipaolo went back outside and immediately used his right hand to punch § 87(2)(b) in the stomach. § 87(2)(b) stated that PO Dipaolo did not say anything to him before punching him in the stomach. When asked how many times PO Dipaolo punched him, he stated that it was “several times.” PO Dipaolo pushed § 87(2)(b) to the ground as he was punching him, and § 87(2)(b) was then on his stomach (Board Review 01).

In PO Nerguti's body worn camera video, located in IA #43, PO Dipaolo tells § 87(2)(b) that an ambulance is going to come and check § 87(2)(b) out. PO Dipaolo tells § 87(2)(b) to keep his hands out of his pockets and tells him that he is not going to ask him again. § 87(2)(b) immediately places his hands in the air. One hand is empty and the other is holding his cell phone. PO Dipaolo tells

§ 87(2)(b) that he is being taken to the hospital because he is acting irrationally, and that § 87(2)(b)'s mother told them that he was not taking his medication. At 49 seconds into the video, § 87(2)(b) looks down at his phone and PO Dipaolo says, "Do me a favor," as he approaches § 87(2)(b) with his arms out towards him. § 87(2)(b) takes a step backward and puts his hands up. PO Dipaolo grabs § 87(2)(b) by his wrists. § 87(2)(b) informs him that he wants to call Internal Affairs. PO Dipaolo tells him to let go of the phone and that he can call them in a second. PO Dipaolo tells him repeatedly to let go of the phone as he attempts to remove the phone from his hand. PO Dipaolo tells § 87(2)(b) that he is not playing with him, attempting to place § 87(2)(b)'s free hand behind his back. § 87(2)(b) pulls his hand with the phone away from PO Dipaolo and attempts to put the phone in his pocket. PO Nerguti tells § 87(2)(b) to keep his hands out of his pockets. § 87(2)(b) immediately removes his hand from his pocket with his phone still in his hand (Board Review 04).

At 21 seconds into PO Dipaolo's video footage, located in IA #44, the incident continues from a clearer angle, showing PO Dipaolo with his hand on § 87(2)(b)'s upper arm. PO Dipaolo has his handcuffs in his hands. § 87(2)(b) states that he is injured twice and then screams. It is unclear from either body worn camera angle, due to quick movements, what action PO Dipaolo takes and what causes § 87(2)(b) to scream. § 87(2)(b) is next seen on the ground (Board Review 14). At 37 seconds into PO James Moussa's body worn camera video, located in IA #45, PO Dipaolo is seen punching § 87(2)(b) four times. The video does not show where on § 87(2)(b)'s body the punches landed. At 1:59 into the video, the officers grab § 87(2)(b)'s arms, place him in handcuffs, and pick him up off the ground (Board Review 13).

PO Dipaolo stated that when he arrived, § 87(2)(b) was standing in the driveway leaning on a vehicle with his hands in his pants. The neighbor was standing outside and pointed him out. PO Dipaolo stated that he approached § 87(2)(b) and asked him to take his hands out of his pants. Given his previous interaction with § 87(2)(b) he believed that § 87(2)(b) may have had a weapon on him. § 87(2)(b) refused to do so and became loud and irate, becoming loud and "causing a scene, acting out." He could not remember what § 87(2)(b) specifically said. PO Dipaolo stated that he and PO Nerguti grabbed § 87(2)(b)'s arms and were able to get his hands out of his pants. He stated that he and PO Nerguti were trying to take § 87(2)(b)'s hands out of his pants when they fell to the ground. PO Dipaolo stated that he never punched § 87(2)(b) in the stomach before falling to the ground. He did not recall if § 87(2)(b) complained of any pain to the stomach or any other area of his body before falling. When asked if § 87(2)(b) was forcibly taken to the ground or if it was an accident, PO Dipaolo replied, "It was kinda both, we were pulling him, and we all fell to the ground" (Board Review 02).

PO Nerguti stated that she and PO Dipaolo spoke to both the neighbor who called the police and § 87(2)(b)'s parents prior to approaching § 87(2)(b). She could not recall what the neighbor told them, but the parents informed them that § 87(2)(b) was not taking his medication. When they approached § 87(2)(b) he had one hand in his pocket and was holding his cell phone with the other. PO Nerguti stated that § 87(2)(b) appeared to be agitated and aggressive, by the tone of his voice and his facial expression. § 87(2)(b) was threatening to call IAB. PO Nerguti did not remember anything else § 87(2)(b) said. PO Dipaolo told PO Nerguti that § 87(2)(b) has a previous EDP history and informed her that § 87(2)(b) pulled a chisel out on officers during a prior interaction. PO Nerguti stated that this led the officers to believe that he may have weapons in his pockets, and they feared for their

safety. PO Nerguti stated that she did not remember the conversation that she and PO Dipaolo had with § 87(2)(b) but she remembered asking him to take his hands out of his pockets numerous times and § 87(2)(b) did not comply. Because § 87(2)(b) refused to take his hands out of his pockets, PO Nerguti and PO Dipaolo forcibly took him to the ground in order to handcuff him. PO Nerguti stated that neither she nor PO Dipaolo made physical contact with § 87(2)(b) prior to him being taken to the ground. She also stated that PO Dipaolo did not punch § 87(2)(b) in the stomach before § 87(2)(b) was taken to the ground. (Board Review 03).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b). As seen in BWC footage, there are two instances in which § 87(2)(b) briefly places one of his hands in his pocket and each time, upon being instructed to, he immediately removes his hand. BWC footage also shows that § 87(2)(b) had his hands in the air when PO Dipaolo began to approach him to place him in handcuffs, after informing him that he was being taken to the hospital to be evaluated because he was acting irrationally and his mother stated that he was off of his medication. § 87(2)(b), § 87(2)(g)

NYPD Patrol Guide Procedure 221-13 states that if a uniformed member of the service reasonably believes that a person who is apparently mentally ill or emotionally disturbed and the person is conducting himself in a manner likely to result in a serious injury to himself or others, they may take them into protective custody. If such a person is dangerous to himself or others, force may be used when it is reasonable to prevent serious physical injury or death. The procedure instructs officers to (1) assess the situation as to the threat of immediate serious physical injury to the emotionally disturbed person, other persons present, or members of the service, (2) attempt to slow the pace of the incident and establish dialogue with the emotionally disturbed person while awaiting arrival of specialized personnel, (3) avoid any action which might agitate or prove the EDP, if possible, and when there is time to de-escalate to use that time to ensure the safety of the EDP and all persons present, and (4) attempt to isolate and contain the EDP while maintaining a zone of safety until the arrival of the patrol supervisor and ESU personnel, if required. (Board Review 06).

NYPD Patrol Guide Procedure 221-01 states that “officers are allowed to use the reasonable amount of force necessary to gain control or custody of a subject.” It also states that members of service should consider actions taken by the subject, immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, whether the subject is actively resisting custody, and the subject’s violent history, if known (Board Review 05).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (E) Discourtesy: An officer spoke discourteously to** § 87(2)(b)

It is undisputed that an officer used profanity towards § 87(2)(b)

Between 1:45 and 2:44 in PO Nerguti's body worn camera video, officers tell § 87(2)(b) "Turn around" four times, "Let me get your hands" once, "Give me your hand" twice, and "Put your hand behind your back" five times. At 2:44 in the video, an officer says, "Give me your fucking arm" to § 87(2)(b) as they struggle to place him in handcuffs (Board Review 04).

PO Dipaolo and PO Nerguti were both unable to identify which officer used profanity towards § 87(2)(b) (Board Review 02, 03).

NYPD Patrol Guide Procedure 203-09 requires that officers be "courteous and respectful" with members of the public (Board Review 07). However, in NYPD v. Court, DCT #79627/04, it was held that the use of profanity by an officer as an order in an attempt to maintain control during a stressful street confrontation with a civilian does not rise to a level of actionable misconduct (Board Review 08).

§ 87(2)(b), § 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b)
- PO Dipaolo has been a member of service for six years and has been a subject in six CCRB complaints and 11 allegations, none of which were substantiated.
- PO Nerguti has been a member of service for two years and this is the first CCRB complaint to which she has been party.

**Mediation, Civil and Criminal Histories**

- This complaint is not eligible for mediation.

- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 10).
- As of August 5, 2019, § 87(2)(b) has not filed a Notice of Claim against the City of New York (Board Review 11).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date